

Title III (formerly IV)

IV

OLC 78-0399/6

3 February 1978

OGC Has Reviewed

MEMORANDUM FOR THE RECORD

SUBJECT: 31 January 1978 Meeting with SSCI Staff Re "Central Intelligence Agency" Title, Intelligence Charter Legislation

STAT 1. On 31 January 1978 members of OLC [redacted] and the undersigned) and [redacted] OGC, met with Pat Norton, of the SSCI staff, to discuss issues relating to the SSCI's latest draft of the "Central Intelligence Agency" title.

2. CIA representatives raised specific issues in the title with a view to underscoring the problems posed thereby to the Agency.

3. CIA representatives were limited to one hour within which they had to raise numerous issues reflected in comments received from various Agency operational elements. Since time was of the essence, CIA representatives were unable to raise every issue, concentrating on those considered to be the major issues. Attached is a paper indicating the issues raised and discussed at subject meeting as well as the position taken by Mr. Norton on each one.

4. In passing, Mr. Norton mentioned that the "CIA" title would be renumbered from Title IV to Title III.

5. On a totally unrelated matter, Mr. Norton indicated that he expected the SSCI would be greatly pressured in FOIA terms as a result of CIA's inadvertent release last week of a document containing highly classified information re an Israeli state secret, since related information in the custody of the SSCI now arguably would be considered in the public domain.

[redacted]

Office of Legislative Counsel

Attachment

Distribution:

1 - AD-M, NFAC
1 - NFAC
2 - OGC
✓ 1 - DDA
1 - DDS&T

1 - IC Staff
1 - DDO/PCS/ [redacted]
1 - Compt
1 - IG
1 - [redacted]

1 - OLC Subject
1 - OLC Chrono

OLC:RJW:sm (3 Feb 78)

ISSUED RAISED RE "CIA" TITLE AT 31 JANUARY 1978 MEETING

1. §402(2), p. 2 - CIA representatives noted that there is no provision made in this subsection to authorize the CIA to perform "special activities."

Mr. Norton agreed to delete the term "foreign" in front of "intelligence" in line 2 of this subsection and to drop the phrase "counterintelligence, and counterterrorism" in lines 2 and 3 of the same subsection.

This subsection then will read in pertinent part: "(2) to authorize the CIA to perform those intelligence activities which are necessary..."

2. §404, pp. 4-5 - CIA representatives indicated that this entire section is unnecessary in view of §108, "Authorities and Duties of the Director," SSCI draft Title I, which covers substantially the same matters.

CIA also made the point that §404 (b) is confusing in two regards:

(a) the subsection nowhere explicitly states that the DNI heads the CIA. Instead, as written and in particular with its reference to §111 (Title I), the section in Title I entitled "Authority of the President to Transfer Certain Duties and Authority of the Director of National Intelligence" to which CIA has objected on numerous occasions, it appears that the DNI and the DCI roles can be split. Mr. Norton made it clear that this is in fact the intent of the subsection and that it reflects some degree of congressional concern that the DNI and D/CIA be split. He also indicated that instead of tackling the ticklish issue head on, the staff decided to throw the ball into the President's court by including §111 in Title I. It is to be noted that in previous discussions on the same issue Elliot Maxwell has emphasized that §111 of Title I is a "political compromise."

(b) the second point discussed under this subsection dealt with the matter of it not being at all clear that the DCI may exercise an inherent delegable power to, for instance, delegate his duties to the DDNI or any ADNI while he, the DNI, is out of Washington or the country. This is nowhere clearly stated in §404 of the CIA title and is even more confused due to the inclusion in Title I of §111.

Mr. Norton said that he understood our point and would look at the matter again in view of our concerns.

3. §404(e), p. 5 - termination authority - as written this subsection limits the Director's termination authority to "national security" situations. This is the same language used in the 18 January 1978 draft of Title I, §108(m). CIA made the same argument as previously raised with regard to this issue (ref: OLC 78-0355, 19 January 1978 and OLC 78-0199, 30 January 1978) and suggested that after the phrase "national security" in line 5 of §404(e) the phrase "or of the efficiency of the Agency" be added.

While Mr. Norton did not accept this language, he said that he might be able to satisfy our concerns in subsection (6) of §406, top of p. 10. Mr. Norton indicated that he would change §406(a)(6) to read in pertinent part as follows:

"(6) appoint and separate such personnel as it deems advisable, without regard to the provisions of Title 5, United States Code, governing appointments to and separations from the competitive services." (emphasis added)

CIA agreed that this on its face address to satisfy our concerns.

Mr. Norton then indicated, per our admonition, that a new subsection (h) would be added at p. 12 stating in effect that anyone terminated under 1406(a)(6) by the Agency or any employee leaving the Agency for whatever reasons would be included on the lists of the competitive service at an equivalent level for purposes of seeking other Federal employment. CIA submitted the following language to Mr. Norton for his consideration:

"[CIA] Employees may move to positions in the competitive service in the same manner as if they were transferring between two positions in the competitive service, provided they have served continuously for at least one year immediately precluding the movement. Employees must not have a break in service of one work day for the purpose of appointment to a position in the competitive service."

4. §406(a)(6), p. 10 - Executive Schedule positions - CIA suggested that it would be more appropriate from a drafting viewpoint to bring in the Executive Schedule positions under §406(a)(6), noting that §406(a)(6) as drafted picks up the authority to appoint up to GS-18. Mr. Norton seemed to accept our comments on this issue. The effect of this then will be to have §409(c)(2), p. 17 read as follows:

"Executive Schedule or equivalent positions within the Agency in addition to those of the Director, the General Counsel and Inspector General other than those transferred to the Agency under this Act shall be as authorized by law."

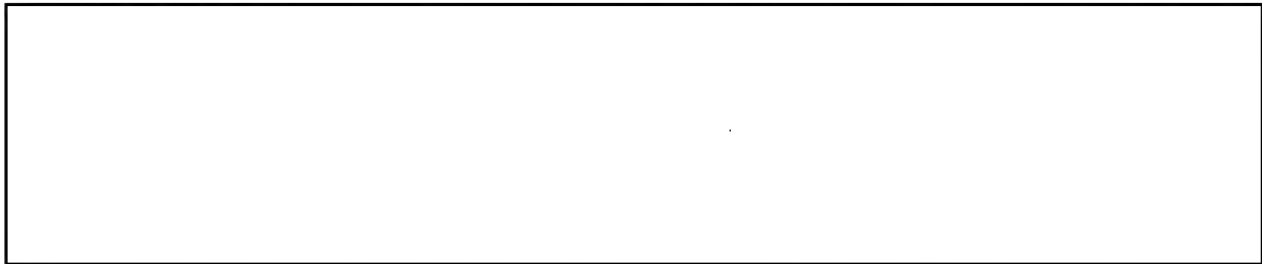
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The revised § 409(c)(2) language then will be added to § 409(a)(6) on p. 10 with appropriate conforming changes being made. § 409(c)(1) on p. 17 will be dropped and § 409(c)(3) will be renumbered to § 409(c).

In order to ensure that the Executive Schedule positions presently being occupied within the Agency continue to exist, § 420(a) is to be changed by inserting after the word "All" and before the word "personnel" in line 1 of the subsection the phrase "positions established in and all..."

5. § 405(b)(1), p. 6 - CIA suggested deleting the term "voluntarily" from the third line of this subsection as redundant. Mr. Norton said he would think about it but did state that there would be voices raised against this since it was included to cover coercive techniques.



7. § 405(f), p. 7 - CIA objected to the phrase "utilizing human sources" in line 5 of this subsection as being too narrow and stated that the subsection should read to provide the Agency coordination authority for all clandestine collection of foreign intelligence outside the U.S. Mr. Norton indicated that a new paragraph would be included in § 405 to address this matter. However, as Mr. Norton read what is to be the new paragraph it was noted that the same limiting language, e.g., "utilizing human sources" remained. Mr. Norton indicated that the staff was under pressure from other agencies to include the limitation.

8. § 405(g)(3), p. 7 - CIA suggested that the phrase "and coordinate" should be inserted after the term "conduct," dropping the term "such." Mr. Norton said he would raise the issue but indicated that State wanted some role in this coordination. CIA stated that State lost on this issue in Executive Order 12036 and said that State should not therefore be raising it again in the context of charters.

9. § 405(g)(4), p. 7 - CIA noted the use of the phrase "Office of the Director" in the second line of this subsection. Mr. Norton indicated that it is Elliot Maxwell's intention to create this entity via definition in Title I.

10. § 405(h)(2), pp. 7-8 - CIA noted that as to the DNI the substance of this subsection is already covered in § 108(c) of SSCI draft Title I and suggested that as to the Attorney General his role under § 405(h)(2) could be covered in § 124(f) of Title I.

11. § 405, pp. 6-8 - CIA noted that § 405 as written makes no reference to the Agency's authority to protect the activity of the installations/activities/information/personnel such as is stipulated in § 1-811 of Executive Order 12036. Mr. Norton indicated that this would be picked up in Title II.

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12. §406, pp. 9-12 - at the outset of our discussion of this section, CIA indicated that there was no provision therein for "Firearms Carrying Authority." Mr. Norton stated that the next draft of the CIA title will have newly included a "Firearms Authority." CIA gave to Mr. Norton the "Firearms Authority" language that it recently proposed and submitted as separate legislation. CIA underscored the fact that Justice had given its endorsement to our language with only one substantive change, the gist of which was communicated to Mr. Norton.

13. §406(a)(5), p. 9 - CIA pointed out to Mr. Norton that language in lines 5 and 6 of this subsection has the Director certifying to himself. Mr. Norton agreed to drop the phrase "certifies to the Director of National Intelligence that a" and insert "expressly waives."

14. §406(a)(9), p. 10 - Mr. Norton indicated that the entire sentence beginning with the words "The Agency..." and ending with "... or cultural affairs" will be dropped from the CIA title and newly included under Title I.

15. §406(d)(2), p. 11 - in line 11 of this subsection, Mr. Norton agreed to insert the following phrase after the phrase "... in whatever amount," and before the word "shall": "after all obligations of the proprietary have been met..."

16. §406(g), p. 12 - Mr. Norton agreed to consider including in this subsection the phrase "Agency budget" so as to preclude any provision of law from being construed to require the Director to disclose such.

17. §408(b), p. 15 - CIA suggested new language for lines 1-6 of this subsection to read as follows:

"In any case in which the Director determines such action to be necessary in the interest of national security, the expenditures of funds appropriated or transferred to the Agency shall be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount certified therein, but such expenditures may only be for activities authorized by law."

Mr. Norton accepted the language but indicated that since the language already included in the draft parrots prior statutes and since the time frame in which they are operating is so short, they probably would not change it.

18. §409, pp. 16-17 - CIA indicated that this section in its entirety is duplicative of §124(e) of Title I.

19. §409(a), p. 16 - CIA asked if there were more General Counsel positions in the Government that are subject to "the advice and consent of the Senate." Mr. Norton stated that there were indeed and added that he was personally opposed to such.

20. §414(a), p. 21: CIA indicated that it would like to limit the element of the crime involved to the mere fact of "unauthorized release" and therefore would like to have the phrase "... in a manner which results in injury to or seriously jeopardizes the safety of such officer or employee..." Mr. Norton did not agree to this. CIA in the alternative then asked to have the phrase "... or usefulness to the Agency..." inserted after the word "safety" and before the word "of" in line 6 of the subsection. Mr. Norton did not agree to this. Mr. Norton did agree to delete the word "seriously" in line 6 of the subsection.

21. §417(a)(1), p. 23: CIA supplied Mr. Norton with two variations on the definition of the term "employee":

a. employee means an employee in or under an agency and more specifically defined by regulations prescribed by the Director.

b. delete the phrase "specifically indicated" in line 3 of §417(a)(1) and insert the phrase "designated as an employee by the Director or by a properly designated official of the Agency." In a subsequent phone conversation, Keith Raffel, of the SSCI, indicated that they would have no problem with accepting the definition of "employee" at (a) above, which tracks that in 5 U.S.C. §5921(3).

22. §417(b)(1)(A), (b)(1)(B) and §417(b)(2) - the phrase "in accordance with" appearing in each of these subsections is to be replaced by the phrase "comparable with and as provided by."

23. §417(d)(1), p. 25 - CIA stressed that the Agency needs authority to pay benefits for special quarters, cost-of-living, travel and representation expenses and the DNI should have the leeway to make these determinations when special circumstances exist.

24. §417(d)(1) and (d)(1), p. 25 - CIA stressed the need for provision to be made under one of these subsections to explicitly grant to the Agency the authority to sell real property overseas and to buy new real property with the proceeds therefrom; Mr. Norton agreed to take it into consideration.

25. §418, p. 26 - CIA questioned the necessity of inclusion of this section stressing that it can only serve to open up the CIARDS issue needlessly. CIA stated that it would be sufficient to reiterate the Director's authority to continue to designate persons in CIARDS per 78 stat 1043. No agreement was reached on this issue. Mr. Norton did agree to drop the term "highly" in line 9 of the section.

26. §420(b), p. 27 - It was agreed to insert the phrase "or any other properly designated official" or words to that effect after the term "Director" and before the phrase "by any court..." in line 7 of this subsection.

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